

Remarks/Arguments

The present Second Amendment and Response serves to replace the unentered Amendment and Response mailed on December 4, 2003. The amendments are of formal nature, and are believed to bring all claims in condition for allowance, or, at least, present the claims in better form for consideration on appeal. The amendments do not require extensive further consideration by the Examiner, and do not add new matter, therefore, their entry after final rejection is respectfully requested.

The Office Action of September 15, 2003

Turning to the Office Action, prior to entry of the present Amendment, claims 1, 3, 4, 6-11, and 21-31 were pending in this application. Claims 21-31 were allowed, and claims 1, 3, 4 and 6-11 were rejected. The present Amendment cancels claims 2, 5, 21, and 27, amends claims 3, 6, 8, 10, 22-25, and 28-30, and is believed to bring all claims in condition for allowance. Therefore, all pending rejections are respectfully traversed.

Objections/Rejections Withdrawn

Applicants note and appreciate the withdrawal of the prior objections and claim rejections, detailed on pages 2-5 of the Office Action.

Maintained Grounds of Rejection

(1) Claims 1, 3, 4 and 6-11 remained rejected under 35 U.S.C. § 112, first paragraph for alleged lack of adequate written description. According to the rejection, there is "insufficient evidence of record suggestive that Applicant was in possession of variant polypeptides with the structural and functional characterization necessary for retaining receptor activity for lysophospholipids and sphingolipids" at the time making the invention.

As the amended claims no longer read on nucleic acid encoding variant polypeptides, the reconsideration and withdrawal of the present rejection is respectfully requested. It is emphasized that the claim amendments were made without prejudice, and without acquiescence to the present rejection or the Examiner's reasoning underlying the present rejection. Applicants

specifically reserve the right to pursue subject matter not literarily covered by the amended claims in one or more continuing applications.

(2) Claims 1, 3 and 6-11 remained rejected under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement commensurate with the scope of the claimed invention. According to the rejection, "without sufficient guidance, the changes which must be made in the nucleic acid sequences, SEQ ID NO: 2 and 4 and amino acid residues of SEQ ID NO: 1 and 3, which results in less than 100% sequence identity is unpredictable and the experimentation left to those skilled in the art is unnecessarily and improperly extensive and undue."

Without acquiescing to the rejection, or the Examiner's reasoning underlying the rejection, the amended claims no longer read on variant nucleic acid or variant polypeptides. Accordingly, the present rejection is believed to be moot, and should be withdrawn. Applicants specifically reserve the right to pursue subject matter not within the literal scope of the amended claims in one or more continuing applications.

(3) Claims 1, 3, 4 and 6-11 were rejected under 35 U.S.C. § 101 for alleged lack of specific, credible and substantial asserted utility or a well established utility. According to the rejection, the specification "does not provide data that supports utility of variant proteins implicated to be effective in applications germane to the invention." The Examiner further noted that claims 1, 3, 4 and 6-11 were also rejected under 35 U.S.C. § 112, first paragraph, since "one skilled in the art clearly would not know how to use the claimed invention," for the same reasons provided in support of the lack of utility rejection.

Since the amended claims are no longer drawn to nucleic acid encoding variant polypeptides, Applicants respectfully request the reconsideration and withdrawal of the present rejection. It is emphasized that the claim amendments were made without prejudice, and without acquiescence to the present rejection or the Examiner's reasoning underlying the present rejection. Applicants specifically reserve the right to pursue subject matter not literarily covered by the amended claims in one or more continuing applications.

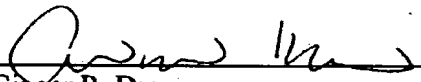
The Advisory Action of March 2, 2004

In the Advisory Action mailed on March 2, 2004, the Examiner indicated that Applicants earlier proposed amendments would have required further consideration. In particular, the Examiner pointed out that claim 8 depended from canceled claim 1, and if the dependence had been corrected to make claim 8 dependent from claim 3, the scope of claims 8 and 27 would have become identical. Applicants submit that the current amendments properly address these issues. In particular, in addition to the amendments retained from Applicants' earlier request, claims 6 and 8 has been amended to depend from claim 3, claim 27 has been canceled, claim 28 has been amended to refer to claim 8, and all earlier dependencies from claim 27 (now canceled) have been eliminated. In view of these amendments, upon entry of the present amendments the claims will be directed essentially to subject matter that was indicated as allowable in the pending Office Action. Accordingly, an early issuance of a Notice of Allowance is respectfully solicited.

The Commissioner is authorized to charge any fees which may be required, including petition fees and extension of time fees, to Deposit Account No. 08-1641 (Docket No. 39754-0921A).

Respectfully submitted,

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